

Records Maintenance and Release

804.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of office records. Protected information is separately covered in the Protected Information Policy.

804.1.1 DEFINITIONS

Definitions related to this policy include (N.D.C.C. § 44-04-17.1):

Closed record - All or part of an exempt record that the Office has determined should not be open to the public.

Confidential record - A record that is declared confidential or is prohibited by law from being open to the public.

Exempt record - A record that is not confidential, nor is required by law to be open to the public. These records may be open to the public at the discretion of the Office .

Record - Recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded or reproduced. These records are in the possession of a public entity and either contain information relating to public business or are intended to be used in connection with public business. This does not include unrecorded thought processes or mental impressions, but does include preliminary drafts and working papers. It also does not include records possessed by a court of this state.

804.2 POLICY

The Pembina County Sheriff Department is committed to providing public access to records in a manner that is consistent with the North Dakota Open Records Law (N.D.C.C. § 44-04-18 et seq.).

804.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Sheriff shall designate a Custodian of Records. The responsibilities of the Custodian of Records include, but are not limited to:

- (a) Managing the records management system for the Office, including the retention, archiving, release and destruction of office public records.
- (b) Maintaining and updating the office records retention schedule including:
 1. Identifying the minimum length of time the Office must keep records.
 2. Identifying the office command responsible for the original record.
- (c) Establishing rules regarding the inspection and copying of office public records as reasonably necessary for the protection of such records.
 1. Making these rules available to the public.
- (d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.

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- (e) Establishing rules regarding the processing of subpoenas for the production of records.
- (f) Ensuring a current schedule of fees for public records as allowed by law is available.
 - 1. The requesting party will be required to pay in advance the actual cost of postage and any established fee up to 25 cents per impression of a paper copy for each record sought. A reasonable fee will be set by the Office for making the copy of a record that is not a paper copy (N.D.C.C. § 44-04-18(2)).
 - 2. The Office will impose a fee not exceeding \$25 per hour per request, excluding the initial hour, for locating records, including electronic records, if locating the records requires more than one hour. The Office will also impose a fee not exceeding \$25 per hour, per request, excluding the initial hour, for excising confidential or closed material from the records, including electronic records (N.D.C.C. § 44-04-18(2)).
 - 3. An electronic copy of a record must be provided upon request at no cost, other than costs for retrieval, except if the nature or volume of the public records requested to be accessed or provided requires extensive use of information technology resources, the Office may charge no more than the actual cost incurred for the extensive use of information technology resources (N.D.C.C. § 44-04-18(3)).

804.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Any office member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

804.4.1 REQUESTS FOR RECORDS

The processing of requests for any record is subject to the following:

- (a) The Office is not required to create records that do not exist (N.D.C.C. § 44-04-18(4)).
- (b) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released (N.D.C.C. § 44-04-18.10).
 - 1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the office-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
 - 2. An employee may disclose or comment on the substance of an open record as allowed by policy. Any agreement prohibiting the disclosure or comment is void and against public policy.
- (c) Except as otherwise provided by law, all public records will be accessible for inspection during reasonable office hours (N.D.C.C. § 44-04-18(1)).

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- (d) Upon request made in person or in writing for a copy of a public record subject to release, the Office shall furnish the requesting party in person or by mail one copy of the public records requested (N.D.C.C. § 44-04-18(2)).
 - 1. Reasonable public access to electronic public records shall be maintained and provided by the Office while ensuring that exempt or confidential records are not disclosed except as otherwise permitted by law (N.D.C.C. § 44-04-18(3)).
 - 2. The Office is not required to provide an electronically stored record in a different structure, format or organization provided the information can reasonably be accessed (N.D.C.C. § 44-04-18(4)).
 - 3. Access to an electronically stored record or copies of records must be provided at the requesting party's option in either a printed document or through any other available medium. A computer file is not an available medium if redaction of any closed or confidential information contained in that file is not possible (N.D.C.C. § 44-04-18(4)).
 - 4. The Office is not required to provide a copy of a record that is available on the Office's website or on the internet. The Custodian of Records shall notify the requesting party the record is available online and direct him/her to the applicable website. If the requesting party does not have reasonable access to the internet, paper copies shall be provided upon payment of the applicable fees (N.D.C.C. § 44-04-18(4)).
 - 5. The Office may allow a requesting party to use a personal device to duplicate records, and if so, shall establish reasonable procedures to protect the integrity of the records (N.D.C.C. § 44-04-18(12)).
- (e) Records of the Office that are closed or confidential may be disclosed to any public entity or federal agency for the purpose of law enforcement or collection of debts owed to a public entity, unless otherwise prohibited by law, provided that the records are not used for other purposes and the closed or confidential nature of the records is otherwise maintained. Such disclosure of confidential records to another public entity continue to be confidential in the possession of the receiving entity, except as otherwise provided by law (N.D.C.C. § 44-04-18.10).
- (f) Any request by a party to a criminal or civil action, adjudicative proceeding, or arbitration in which the Office is a party, or by an agent of the party, will be honored subject to applicable discovery rules. The Office may deny a request if the request seeks records that are privileged under applicable discovery rules (N.D.C.C. § 44-04-18(6)).
- (g) At the request of a victim, one copy of each report or record relevant to his/her case should be provided unless it is confidential or a court determines that disclosure would substantially interfere with an investigation (N.D. Const. art. I, § 25).
- (h) The Office may require written clarification of a request to determine what records are being requested, but may not ask the motive or reason for requesting the records or for the identity of the requesting party (N.D.C.C. § 44-04-18(2)).

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804.4.2 DENIALS

The denial of a request for records is subject to the following:

If access to any public record is denied, the requesting party may request a written statement of the grounds for the denial. The Custodian of Records shall respond in writing, citing the law, regulation or authority under which access is denied or a statement that the record does not exist (N.D.C.C. § 44-04-18(7)).

If repeated requests for records become disruptive to the essential function of the Office, inspection and/or copies of records may be refused. In such event, the Custodian of Records shall provide the requesting party with written reasons supporting the refusal (N.D.C.C. § 44-04-18(13)).

804.5 RELEASE RESTRICTIONS

Examples of release restrictions include:

- (a) Personal identifying information, including an individual's photograph, Social Security and driver identification numbers; name, address and telephone number; and medical or disability information that is contained in any driver's license record, motor vehicle record or any office record, including traffic accident reports, is restricted except as authorized by the Office, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).
- (b) Confidential information such as any telephone number and the home address of any employee; records or other information that would reveal the identity or endanger the life or physical well-being of an undercover deputy; or any record containing the work schedule of employees (N.D.C.C. § 44-04-18.3).
- (c) Personnel records, medical records and similar records which would involve personal privacy (N.D.C.C. § 44-04-18.1).
 - 1. This includes information regarding the type of leave taken by an employee and leave that has been applied for but not yet taken (N.D.C.C. § 44-04-18.1).
- (d) Certain 9-1-1 records (N.D.C.C. § 44-04-18.21; N.D.C.C. § 57-40.6-07).
- (e) Any record containing an address, telephone number or any identifying information that, if released, could reasonably be used to locate or identify a victim or alleged victim of domestic violence, sex offenses under Chapters 12.1-20 or 12.1-27.2, or human trafficking under Chapter 12.1-41 of North Dakota's Criminal Code (N.D.C.C. § 44-04-18.20).
- (f) Any record regarding a delinquent child or that is a compilation of a minor's name, address, telephone number or any combination thereof (N.D.C.C. § 27-20-52; N.D.C.C. § 44-04-18.13).
- (g) The name and any other information that would identify any victim or witness to a crime as allowed by law (N.D.C.C. § 12.1-34-03; N.D.C.C. § 12.1-34-02).
 - 1. In the event a request is made for any confidential or privileged information about the victim or any information that could be used to locate or harass a victim or the

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victim's family, the Custodian of Records shall promptly notify the crime victim liaison (N.D. Const. art. I, § 25).

- (h) The identity, pictures and images of any victim of human trafficking or of the victim's family members unless the information is required to be released by a court order; the information is necessary for investigation or prosecution of the offense; or the information is necessary to ensure provision of services or benefits for the victim or victim's family (N.D.C.C. § 12.1-41-10).
- (i) Crime scene images of a victim of a homicide or sex crime or any image of a minor victim of any crime is an exempt record (N.D.C.C. § 44-04-18.7(8)).
- (j) Interviews and statements of child victims or child witnesses obtained during an investigation of a violent or sexual crime (N.D.C.C. § 12.1-35-03).
- (k) Any image taken in a private place by a member's body camera or similar device (N.D.C.C. § 44-04-18.7).
- (l) Information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known (N.D.C.C. § 44-04-18.3).
- (m) Active criminal intelligence information and active criminal investigative information, and personal information of any person contained in an active or inactive file (N.D.C.C. § 44-04-18.7).
 - 1. Active investigatory work product (N.D.C.C. § 44-04-19.1(3)).
 - 2. A computerized index of names included in criminal files, whether active or inactive (N.D.C.C. § 44-04-18.7(7)).
 - 3. However, the Office shall maintain a list of all files containing active criminal intelligence and investigative information that have been in existence for more than one year. The list is subject to proper disclosure (N.D.C.C. §§ 44-04-18.7(1)).
- (n) Intelligence information, law enforcement techniques or security procedures (N.D.C.C. § 44-04-24; N.D.C.C. § 44-04-25).
- (o) Computer software programs and passwords (N.D.C.C. § 44-04-18.5; N.D.C.C. § 44-04-27).
- (p) Attorney work product that was created exclusively for civil or criminal litigation or in anticipation of potential litigation involving this office (N.D.C.C. § 44-04-19.1).
- (q) Records related to an active internal investigation of a complaint against the Office or a member for misconduct. Restriction is limited until the investigation is complete or 75 days have passed from the date of the complaint, whichever occurs first (N.D.C.C. § 44-04-18.1(6)).
- (r) Other records where:
 - 1. Such inspection would be contrary to any state statute.
 - 2. Such inspection would be contrary to any federal statute or regulation.

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3. Such inspection is prohibited by rules or procedures promulgated by the North Dakota Supreme Court or by the order of any court.

804.6 SUBPOENAS AND DISCOVERY REQUESTS

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information (N.D.C.C. § 44-04-18.11).

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the State's Attorney or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Office so that a timely response can be prepared.

804.7 RELEASED RECORDS TO BE MARKED

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the office name and to whom the record was released.

Each audio/video recording released should include the office name and to whom the record was released.

804.8 SECURITY BREACHES

Members who become aware that any Pembina County Sheriff Department system containing personal information may have been breached should notify the Dispatch Supervisor as soon as practicable.

The Dispatch Supervisor shall ensure the required notice is given to any resident of this state whose unsecured personal information is reasonably believed to have been acquired by an unauthorized person. If the breach involves more than 250 individuals, notice shall also be given by mail or email to the Attorney General (N.D.C.C. § 51-30-02).

Notice shall be given in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of the Pembina County Sheriff Department or any measures necessary to determine the scope of the breach and to restore the integrity of the data system. Notice may be delayed if notification will impede a criminal investigation (N.D.C.C. § 51-30-02).

For the purposes of the notice requirement, personal information includes an individual's first name or first initial and last name in combination with any one or more of the following (N.D.C.C. § 51-30-01):

- (a) Social Security number
- (b) Driver's license number or North Dakota identification card number
- (c) Full account number, credit or debit card number, or any required security code, access code, or password that would permit access to an individual's financial account

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- (d) Date of birth
- (e) Maiden name of individual's mother
- (f) Medical information or health insurance information
- (g) Employee identification number in combination with any required security code, access code or password
- (h) Digitized or other electronic signature

If the breach reasonably appears to have been made to protected information covered in the Protected Information Policy, the Dispatch Supervisor should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

804.9 EXPUNGEMENT

Expungement orders received by the Office shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall expunge such records as ordered by the court. Records may include, but are not limited to, a record of arrest, investigation, detention or conviction. Once the record is expunged, members shall respond to any inquiry as though the record did not exist.